

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

UNITED STATES OF AMERICA,                     ) 3:12-cv-02265-SI  
   )  
                  Plaintiff,                             )  
   )  
                                  v.                         ) February 10, 2014  
   )  
THE CITY OF PORTLAND,                     )  
   )  
                  Defendant.                             )  
\_\_\_\_\_) Portland, Oregon

TRANSCRIPT OF PROCEEDINGS  
(Telephone Conference)  
BEFORE THE HONORABLE MICHAEL H. SIMON  
UNITED STATES DISTRICT COURT JUDGE

## APPEARANCES

1 FOR THE PLAINTIFF:

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17 FOR ENHANCED AMICUS CURIAE:

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24 United States District Courthouse  
1000 SW Third Avenue, Room 301  
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1 (February 10, 2014)

2 P R O C E E D I N G S

3 (In chambers; telephone conference:)

4 THE CLERK: Your Honor, this is the time set for  
5 a telephone conference in 12-cv-2265-SI, United States of  
6 America versus of City of Portland.

7 Counsel, there is a court reporter present.  
8 Please be sure to state your name before you speak. Here  
9 is Judge Simon.

10 THE COURT: Good morning, everyone.

11 COUNSEL: Good morning.

12 THE COURT: I have been starting the process of  
13 going through the written submissions that have already  
14 been received from folks that both want to testify orally  
15 at the hearing and also those that did not ask to testify.

16 I understand that it was the United States that  
17 suggested that we have this telephone conference. So let  
18 me turn it over to the United States and ask what do you  
19 recommend we need to address in this conference.

20 MS. BROWN: Thank you, Your Honor. This is  
21 Adrian Brown for the United States.

22 Prior to getting on this call, just to let you  
23 know, all counsel did confer and discuss the matters that  
24 we would like to raise with you today. We have agreement  
25 on most everything and some additional questions.

1           The first matter we would like to address with  
2 you is in regard to those written comments. The Court's  
3 order for the fairness hearing requires the United States  
4 to put together a summary sheet of the comments and the  
5 presenters that submitted the comments and confer with  
6 counsel before submitting that to the Court.

7           The Court's order has the deadline for that to  
8 be submitted by tomorrow, the 11th. Given some need for  
9 additional time, getting the CD from the Court and  
10 discussing it amongst counsel, we would ask if we could  
11 have an extension of that deadline to provide it to the  
12 Court this Thursday at 9:00 a.m. We have conferred with  
13 the other counsel, and there is no objection to that  
14 request.

15           THE COURT: Of course. That's not a problem at  
16 all.

17           MS. BROWN: Thank you, Your Honor.

18           So we plan on submitting to the Court what will  
19 essentially be a spreadsheet, after we confer with  
20 counsel, that will break up the comments by organization  
21 and by individuals. There will be many different columns  
22 with different categories and a summary of the testimony  
23 that the person has submitted. That order will provide  
24 the Court with some idea of how many comments are received  
25 and the extent of the timing of the hearing.

1           So that brings us to our next issue, which is  
2 the timing. We did a rough calculation of the amount of  
3 time that the various commenters would need based upon  
4 each individual having five minutes and each organization  
5 having up to three representatives with ten minutes each.  
6 Based on our rough calculations thus far, we have come up  
7 with approximately 12 hours of testimony. That does not  
8 incorporate breaks or time for shuffling people around.

9           So we wanted to talk to you about how the Court  
10 would like to set the timing of the hearing. In essence,  
11 we could have it start at 9:00 a.m., and the Court  
12 mentioned it would go until it is all over. But does the  
13 Court have an expectation at this point in time as to how  
14 long the Court is willing to go for a day and whether or  
15 not the Court would be breaking this up into two days?

16           THE COURT: I would like to hear the parties'  
17 preferences, but the Court has the ability and willingness  
18 to go 24/7. By the way, the court reporter just gave me a  
19 funny look. (Laughter)

20           So I think it might be useful to arrange for a  
21 second court reporter. Maybe what we can do is essentially  
22 go maybe two or three hours with one court reporter. Then  
23 maybe if I don't take much of a break, five minutes or so  
24 every now and then, but that way we can have a second  
25 court reporter come in. The people in my opinion who

1 really, really need a significant break of more than five  
2 minutes is the court reporter.

3           Myself and our staff can handle a five-minute  
4 break every now and then. Frankly, I think counsel can  
5 handle that as well. If anybody wants to break more  
6 frequently or a bit longer, you are welcome to ask for it,  
7 and I will give it to you. I think the only one I need to  
8 make sure we can give appropriate breaks to is my court  
9 reporter, and we will make sure we will have a second  
10 reporter lined up.

11           MS. BROWN: Okay. So if we were to start at  
12 9:00 a.m., then it is the Court's intention to go that day  
13 until everyone has had the opportunity that they want?

14           THE COURT: I do want to play it by ear, and  
15 sometimes I do this with jury trials. When I ask the jury  
16 whether they want to keep going after 5:00 or come back  
17 the next morning at a certain time, maybe even early, if  
18 it looks like we are going to have difficulties getting  
19 things done by 5:00 or 6:00 p.m., then maybe perhaps early  
20 afternoon I may have ask the folks who have not yet  
21 testified, by a show of hands: Are there folks who would  
22 rather go and wait until the evening and make sure it gets  
23 done today or maybe folks would rather come back tomorrow.  
24 Maybe take my cue from maybe what the majority of the  
25 folks in the room say.

1           Again, right now is the perfect time for me to  
2 hear all the opinions from our four parties.

3           MS. BROWN: Absolutely. The United States is  
4 certainly open to extend it into a second day, if that's  
5 necessary. As far as counsel coming in from Washington,  
6 D.C. and local counsel, we have a second day available if  
7 the Court wants to do that.

8           Just talking to the parties, it appears that  
9 everyone, all the parties except AMA -- AMA has some  
10 logistical issues with going into a second day with one of  
11 their counsel having a deposition scheduled. But other  
12 than that, I think we are open to whatever the Court feels  
13 is appropriate.

14           THE COURT: Again, I will hear from AMA and the  
15 City and the Portland Police Association in a moment. I  
16 think that we should make this decision pretty much once  
17 we get the facts on the ground, by early to mid-afternoon.  
18 If we think we can finish by 5:00 or 6:00 or 7:00, I  
19 definitely think we should do that.

20           If it looks like it is not likely to be able to  
21 finish, unless we go to significantly after six o'clock or  
22 so, then I will ask counsel for the parties present as  
23 well as the people who have not yet testified what their  
24 preferences are.

25           But, also, realize that your 12-hour assumption

1 assumes that everyone will take their full five minutes or  
2 the organizations will take their full 30. That may or  
3 may not be correct. We really won't know that until the  
4 day of hearing.

5 MS. BROWN: Okay. Very well, Your Honor.

6 THE COURT: Do any other parties want to be  
7 heard on this issue now before we move on to another  
8 issue?

9 MS. CURPHEY: This is Shauna Curphey with the  
10 AMA Coalition. I think between Ashlee, my co-counsel, it  
11 might be one of us one day and one of us the other day,  
12 and that's how we will have to proceed.

13 MS. ALBIES: I think my deposition is scheduled  
14 for 1:00 p.m. If we do run over, it sounds like we would  
15 reconvene in the morning, and that would be preferable  
16 than going later and then resume in the morning.

17 THE COURT: Yes. My plan would be that we would  
18 start up again at 9:00 a.m. the next morning. I have many  
19 things on my calendar, but we can move or postpone those.

20 MS. OSOINACH: Your Honor, Ellen Osoinach.

21 The City is flexible. We can play it by ear.

22 MR. KARIA: ON behalf of PPA, we are flexible  
23 too.

24 THE COURT: Thank you.

25 MS. BROWN: The next topic, Your Honor, in



1 regards to how the public will be notified of both their  
2 time coming to an end, whether it be five minutes or ten  
3 minutes and how they will be notified as far as when they  
4 will be expected to testify. So to take the first  
5 question, many of us are familiar with City Council. It  
6 has a light and a buzzer that tells people when they are  
7 up. We all know the Ninth Circuit has that ability, but  
8 we weren't sure what the Court's ability was for notifying  
9 individuals and if there was any thought into that.

10 THE COURT: Sure. We do not have the  
11 technological ability of either the City or the  
12 Ninth Circuit, so we are going to go the old-fashioned  
13 way. Our courtroom deputy, at my direction, will hold up  
14 two cards. One card will say "one minute remaining," and  
15 the second card will say "time expired" or "stop" or  
16 something that is phrased appropriately like that.

17 Does anyone have any comments on that approach?

18 MS. BROWN: That's fine for the United States.

19 MS. OSOINACH: That works for the City.

20 THE COURT: By the way, does anybody have any  
21 suggestions as to what's the right way to say stop in this  
22 circumstance? "Time expired"? "Stop" seems so harsh.

23 MS. ALBIES: A loud buzzing noise maybe or a  
24 bell or a gavel. (Laughter)

25 THE COURT: We will work on it. We may bring in

1 an air horn. We will work it out.

2 MS. BROWN: Then as far as the testimony of  
3 individuals, the fairness hearing order sets out some  
4 procedures but we wanted to make sure that we were all  
5 understanding of any additional procedures. The way the  
6 order reads from Document 53, page 4, is that the  
7 individuals will come to the courthouse and check in with  
8 Mary, or other courtroom deputies, sign in to let the  
9 Court know they are there and ready to testify. The  
10 Court's order also says that those who have submitted  
11 written comments will be given priority for testifying.

12 So we were just wondering if there were any  
13 other procedures that the Court anticipated following and  
14 people signing up and whether or not people will kind of  
15 know what order they are in so they can decide whether  
16 they want to leave for an hour and come back.

17 THE COURT: Sure. You mentioned Docket 53. I  
18 noticed this morning, I don't think we have actually filed  
19 my signed order setting notice and procedure for fairness  
20 hearing in CM/ECF. All we have is the Government's  
21 stipulated motion, which we took in large part, but not  
22 completely.

23 So unless I'm mistaken, we will get that put on  
24 CM/ECF later today.

25 MS. BROWN: I thought Docket 53 was the filed

1 version, but I could be wrong.

2 THE COURT: Let me check. I'm really not sure.  
3 We will double-check.

4 In any event, what I plan on having, we have two  
5 externs here who will assist Mary, our courtroom deputy,  
6 in staffing a table at the entrance to the courtroom on  
7 the 13th floor. We should have some signage on the first  
8 floor.

9 Adrian, can I ask you to take care of that, to  
10 have some type of signage in the lobby of the courthouse,  
11 after people clear security, that says the name of the  
12 case; fairness hearing, proceed to 13th floor,  
13 Courtroom 13B. We will staff a table right outside  
14 Courtroom 13B with a sign-up sheet. I am going to be  
15 consistent with my order. So we're not taking people in  
16 the order they sign up that morning, but we want to know  
17 who is there. I will compare that with our list of  
18 written testimony.

19 Then when I take the bench, after some  
20 preliminary comments, I will announce who will be  
21 testifying, who we will be hearing from in the first half  
22 of the morning session, in the second half of the morning  
23 session, and then probably update that midway through, and  
24 then let folks know who we will be hearing from in the  
25 afternoon session.

1 MS. BROWN: I think that will be very helpful.  
2 The parties, when we discussed this, had just a variety of  
3 different thoughts on that. So that works for the  
4 United States.

5 THE COURT: By the way, anybody else is free to  
6 make a comment, if you wish.

7 MS. BROWN: The only other questions we have  
8 about the individuals coming up to testify are whether or  
9 not there would be any translators available. So far we  
10 have not received any comments in Spanish, but I know that  
11 the Court's order must open the ability for people to  
12 come, even if they did submit comments. When we were  
13 doing community interviews, there were individuals that we  
14 spoke to that spoke Spanish, and we needed translators for  
15 them. I don't know if that's something the Court has  
16 thought about or how we would like to handle that.

17 THE COURT: I don't think we have seen any  
18 written requests to have a translator available. In terms  
19 of the economics involved, I don't want to have to pay for  
20 an interpreter to be present all day if that interpreter  
21 is not needed. So I'm going to take the position that  
22 since no one has yet specifically asked for interpretive  
23 services from the Court, we're not going to provide any.  
24 Obviously if someone asks for it specifically, for a  
25 specific witness, we will see what we can do. We

1 certainly do have a staff interpreter who speaks Spanish  
2 available to us.

3 Let me ask probably Ms. Curphey or Ms. Albies,  
4 are you aware of any folks who are coming in that will  
5 need interpretation services?

6 MS. CURPHEY: We are not aware of anybody that  
7 needs an interpreter at this time.

8 THE COURT: Okay. I am going to be very  
9 informal on that. If someone comes in with their own  
10 personal interpreter -- maybe someone wants to give their  
11 story, but doesn't speak English well and wants to have a  
12 friend speak for them, I don't have a problem with that.

13 MS. CURPHEY: Okay, Your Honor. We will relay  
14 that to the AMA Coalition, who may field questions about  
15 this.

16 MS. BROWN: Another option for another resource,  
17 Your Honor, is that the United States Attorney's Office  
18 has a contract with a language services company that we  
19 use for callers who call our office and don't speak  
20 English. So that's another option. We could bring that  
21 service in by phone as another option.

22 THE COURT: Excellent. If we do have someone  
23 that we didn't anticipate, we at least have that  
24 opportunity. Excellent.

25 MS. BROWN: I did have one other matter

1 regarding individuals testifying. So far in the  
2 submissions we have been reviewing, there have been some  
3 individuals that have submitted comments as an individual  
4 and then different and separate comments as a  
5 representative for the organization.

6 For those persons that overlap, rather than  
7 having them come up and down twice before the Court, we  
8 discussed this amongst the parties that we are all  
9 agreeable to having those individuals testify at one time.  
10 They can provide both information to the Court at that  
11 time in their individual view and in their view as a  
12 representative for an organization, if that would be  
13 agreeable to the Court, and limit them to the ten minutes  
14 that an organization would have.

15 THE COURT: That seems fair to me.

16 MS. BROWN: Okay. Moving on to counsel's  
17 presentation, it appears that each party, except for the  
18 AMA -- just to let everyone know, we are getting some  
19 feedback on this end. Is everyone able to hear me okay  
20 without feedback?

21 THE COURT: The Court can hear you fine.

22 MS. BROWN: Okay. Forgive me if I'm kind of  
23 hesitating, because I am getting some feedback here.

24 But it appears that each party's counsel has a  
25 presentation to make, except for the PPA, and we just

1 wanted to give the Court an idea of what each party is  
2 planning on presenting for their counsel presentations and  
3 for potential witnesses.

4 THE COURT: Do you want to do that at the  
5 fairness hearing on the 18th?

6 MS. BROWN: Yes. We would like to do that in  
7 the beginning, basically make opening remarks. Our  
8 presentation would consist of some brief opening comments  
9 about our role in this matter, the United States' role,  
10 and then we have some slides, demonstrative aids. We  
11 would ask if the Court can do this -- I think I have seen  
12 the Court do this before -- have a big screen available so  
13 the public can see the slide at the same time the Court is  
14 seeing them. We basically have some slides we would like  
15 to go through that would help educate the Court and the  
16 public about the process we engaged in prior to getting to  
17 this point and the type of public engagement that we took  
18 on.

19 Then we also have our police practices expert  
20 that provided assistance during the investigation. He is  
21 a retired police chief, Charles Gruber. We would ask him  
22 to testify in a very limited capacity as to the types of  
23 investigation he participates in and how, in his opinion,  
24 the settlement agreement meets the remedies sought from  
25 the complaint. That, in total, would last, we estimate,

1 an hour or less from the United States.

2           There are two other potential experts that  
3 aren't experts for the DOJ, but they are experts in the  
4 mental health field that may testify. We are still  
5 conferring with the two individuals. One would be  
6 Chris Bouneff, who is the executive director for NAMI  
7 Oregon. The other would be either Maggie Bennington-Davis  
8 or Darryl Walker, who are the leaders of Cascadia  
9 Behavioral Health. So those two we haven't figured out  
10 whether or not they would be providing public comments  
11 orally or written comments or come in for a brief question  
12 and answer session. So we're still working on those two.

13           With respect to all of that, that would take an  
14 hour, or slightly more than an hour, for the  
15 United States.

16           THE COURT: All right. Let me give you my  
17 comments.

18           Mary, do we have the large screen that comes  
19 down from the ceiling in our courtroom?

20           THE CLERK: Yes.

21           THE COURT: Let's make sure we have got your  
22 slides tested so we can make sure that works. It is fine  
23 with me to have both our television screen, which is in  
24 the back of the courtroom, but it is only like  
25 three-by-four, or something. We will bring down the large



1 screen. The people that can see that the best are those  
2 in the jury box. But members in the audience, depending  
3 on where they are sitting, can see that large screen  
4 moderately well. Let's make sure we've worked out all of  
5 the logistics on that, and that's fine with me.

6 With respect to Mr. Gruber testifying, do you  
7 envision he would be speaking from a podium addressing the  
8 Court, or would you rather see him on the witness stand  
9 where he would be more visible to the audience?

10 MS. BROWN: We would prefer to have him on the  
11 witness stand and have him be visible to the audience, and  
12 the Court, with a limited inquiry from counsel to direct  
13 his statements and his exam.

14 At the same time, we discussed with counsel a  
15 stipulation that any parties' witnesses would not be  
16 subject to cross-examination. There are some other  
17 witnesses that the other parties are bringing forward,  
18 along with the public, who won't be cross-examined. We  
19 have discussed having a stipulation that the witnesses  
20 wouldn't be crossed. Certainly we anticipate keeping his  
21 testimony limited.

22 THE COURT: By the way, speaking of the podium,  
23 I am wondering if it might make the most sense to place  
24 the podium not so it is facing the Court, with counsel's  
25 back to the audience, but if you visualize the courtroom,

1 maybe have the podium so the speaker's back is to the jury  
2 box, which will most likely be empty. That way, with a  
3 roughly 90-degree sweep, counsel can speak to the Court  
4 and also to the members of the public.

5 What do you think of that idea?

6 MS. BROWN: The United States thinks that's a  
7 great idea.

8 MS. ALBIES: I think that's a great idea.

9 THE COURT: How we normally want the podium for  
10 opening and closing, which by the way, is a terrible idea.  
11 Please don't use a podium for openings and closings in a  
12 jury trial, but that's my two cents.

13 But let's take that podium and then switch it  
14 around so it is facing the other way so the back is facing  
15 the jury box. That way, they can easily look at the Court  
16 and also the members of the public. Then we can still use  
17 the PA system, the microphone system, that works with that  
18 podium. We can do that.

19 Let me also note two more points I wanted to  
20 make, and then I will turn it over to anybody else.

21 When you say there is no cross-examination by  
22 the parties, that's fine with me. But I reserve the right  
23 to question any witness, whether it be on the stand, if I  
24 think it needs clarification, like Mr. Gruber, or I do  
25 plan on asking on occasion follow-up questions from some

1 of our people who give testimony. I am going to do my  
2 best not to intimidate anybody, but it might be helpful to  
3 ask some follow-up questions. I don't want anybody to be  
4 surprised if I do that.

5 MS. BROWN: Yes, Your Honor. I do need to note,  
6 in the interest of disclosure, the AMA still does need to  
7 talk with their clients about not crossing Chuck Gruber or  
8 any other witnesses that the City puts on. So I want to  
9 put that caveat out there. I won't be speaking for the  
10 AMA.

11 THE COURT: That's fine. My last point on this  
12 issue, and then I will turn it over to the other folks.  
13 Although what you say is fine with me, in terms of the  
14 process, I just want to make my observation that I believe  
15 most of the members of the public who are going to make  
16 the effort to come to this fairness hearing are doing it  
17 because, more importantly, they want to be heard and have  
18 their story heard as opposed to they want to hear  
19 information and hear what either the United States or the  
20 City or the police association or the AMA has to say.  
21 That's just my opinion. I could be wrong. But I believe  
22 they are coming primarily because they want to be heard,  
23 and they feel they have got something to say.

24 That said, I think it would behoove us all if  
25 the United States did not spend more than an hour, and,

1 frankly, if you could cut it down, I think it would be  
2 better, so that we don't look like we are in any way  
3 filibustering or making people wait an unduly long period  
4 of time for people who feel they have got something on  
5 their chest that want to get off, and I don't want to make  
6 them wait too long.

7 MS. BROWN: Yes, Your Honor. We will take  
8 another look at everything and keep that in mind and do  
9 our best to reduce the time.

10 THE COURT: Because you have got two audiences  
11 here obviously. One is me, because I have to make a  
12 fairness decision, but I can learn a lot by reading and  
13 have learned a lot by reading. I will also give you the  
14 opportunity to submit comments by our March 11th date.  
15 Then if you want additional oral argument after that, let  
16 me know. Otherwise, I will receive your post-hearing  
17 briefs by March 11. So I can learn a lot of what you need  
18 to communicate to me in that fashion as well.

19 So to some extent, to the extent that you plan  
20 on speaking to the members of the public in your  
21 presentation, although I'm positive what you want to say  
22 is valuable and important for them to hear, I am concerned  
23 that they may get frustrated if they are made to wait too  
24 long.

25 MS. BROWN: Yes, Your Honor.

1 THE COURT: Okay. Does anyone from either the  
2 City or police association or Albina Ministries Coalition  
3 want to make any comments on anything we have talked about  
4 so far?

5 MS. CURPHEY: This is Shauna Curphey for the AMA  
6 Coalition. We want to clarify that counsel for AMA  
7 Coalition doesn't plan on making a presentation other than  
8 to introduce our clients who intend to speak on their own  
9 behalf. I am assuming they will walk up to the podium and  
10 make their presentation as if they were testifying as a  
11 member of the public.

12 THE COURT: That's fine.

13 MS. CURPHEY: That will look different than the  
14 DOJ or the City's presentation who plan to put witnesses  
15 on the stand. I wanted to make that clear.

16 THE COURT: That's fine. Let me ask, with the  
17 AMA and the Portland Police Association -- I don't know if  
18 you are going to have any witnesses from your association,  
19 Mr. Karia -- but if you do, would you prefer them to go  
20 earlier in the process or later in the day?

21 MR. KARIA: Thank you, Judge. This is  
22 Mr. Karia. We do not plan on having any witnesses or  
23 presentation. If we do, frankly, we will go with the flow  
24 based on how the hearing is proceeding.

25 THE COURT: Okay. And Shauna or Ashlee, do you

1 want the AMA witnesses to go first, early in the process?  
2 In the morning? Later in the day? What preferences do  
3 you have?

4 MS. ALBIES: This is Ashlee Albies. We had  
5 intended, instead of counsel presentation, we understood  
6 the DOJ and the City would be making counsel presentations  
7 and maybe putting on a witness in the initial part of the  
8 morning. We had anticipated that counsel would be  
9 introducing the three speakers from the AMA Coalition who  
10 would then make a presentation. We are going to confine  
11 it to ten minutes each. We can certainly try to cut that  
12 down for the three individuals who are going to speak on  
13 behalf of the AMA Coalition, which will be making the  
14 Coalition's presentation and their position to the Court  
15 and to the members of the public.

16 THE COURT: All right. That sounds fine.

17 Let me, Ms. Osoinach, do you plan on calling  
18 witnesses for the City or making counsel presentation on  
19 behalf of the City?

20 MS. OSOINACH: Yes, we did. Honestly, given  
21 your comments, I am rethinking that, as probably is the  
22 United States. One of the things that might help me is to  
23 ask you a question: Are you envisioning that there will  
24 be a continuing sign-up? So in other words, are you  
25 expecting that any member of the public that wishes to

1 testify needs to be at the courthouse promptly at  
2 9:00 a.m. to sign up, or are you envisioning that people  
3 will filter in throughout the day, and there will be a  
4 continuing sign-up?

5 THE COURT: The latter. My experience, and I  
6 have limited experience, but I have some experience with  
7 homeless/mentally ill. Frankly, back when I was in  
8 private practice, as a pro bono counsel, I represented  
9 some folks that fit in that category. It is very  
10 difficult for them, I'd say, it is fairly difficult for  
11 them to really get to some place by a specific time. So I  
12 do plan on allowing folks that come in later to still  
13 testify. But my plan would be, if you came in later, you  
14 are probably going to be testifying near the end.

15 Does anybody disagree with that approach?

16 MS. OSOINACH: No, I don't. I assumed that was  
17 sort of the plan.

18 THE COURT: Yes. By the way, I do hope the City  
19 does make a presentation. I think it is an excellent idea  
20 for the U.S. Department of Justice to make an opening  
21 presentation, followed by the City, and then we can go  
22 into the AMA's approach the way it has just been  
23 described. Obviously if the Portland Police Association  
24 wanted to make a presentation, they are certainly welcome.

25 I think that's all an excellent idea and an

1 excellent way to start. I was just having some concerns,  
2 if we have a lot of people that show up at 9:00 a.m.,  
3 making them wait a significant period of time before they  
4 speak. But I definitely do not want to discourage the  
5 United States or the City or AMA or even the police  
6 association to make opening comments if they want to. I  
7 think that's an excellent way to start.

8 MS. OSOINACH: Your Honor, the City's intent, to  
9 be perfectly blunt, is that the majority of the comments,  
10 if not all of them, are critical of the settlement  
11 agreement. So I think in weighing the two audiences, you  
12 and the public, given the fact that the entire public  
13 might not be there right there at the start, when the City  
14 envisions making that presentation, the utility of  
15 reaching that audience is minimal, although certainly I  
16 think the press will be there, and they will get out a  
17 larger picture for the audience.

18 The City's concern is largely in framing the  
19 issue for the Court in terms of talking about what the  
20 City has done so far in implementing the settlement  
21 agreement, even if it had not been an order of the Court,  
22 presenting evidence about the implementation and the  
23 effects on the ground to help both you and the public  
24 understand the reasonableness and adequacy, as we have  
25 implemented it thus far.



1           So that's sort of our envisioning of the  
2 presentation. I think I would be comfortable with you  
3 working in the City's presentation, knowing that's the  
4 contents, in whatever way you felt works best for the  
5 presentation. So, for example, if you have 30 people  
6 there at 9:00 a.m., and you want to get started with the  
7 public testimony, I would not have any objection to  
8 allowing that testimony to happen in the morning and then  
9 say we will hear from the City or the DOJ in the  
10 afternoon. I don't feel like the City's presentation,  
11 although I think it would help to frame the issue, I don't  
12 think it has to happen in the beginning.

13           THE COURT: All right. I think that's helpful.  
14 I will play it by ear. I do think hearing from the City  
15 and from the United States early on will help frame the  
16 issues.

17           Did I hear you say that the City's presentation  
18 will be critical of the settlement agreement?

19           MS. OSOINACH: No. The City has observed that  
20 the majority of the comments that were submitted to the  
21 Court have been critical of the settlement agreement.

22           THE COURT: I agree with that. I'm glad I  
23 misheard what you said.

24           MS. OSOINACH: Yes.

25           THE COURT: All right. Go ahead.

1 MS. BROWN: Your Honor, just a few evidentiary  
2 matters to cover, and then I think I will be done with the  
3 list from the United States.

4 The first is that we talked to the parties about  
5 stipulating to authenticity of factual documents that the  
6 parties plan on submitting. At this point in time, the  
7 only document that the United States plans on submitting  
8 as part of a factual record is the findings letter, which  
9 I know is already in possession of the Court. That's what  
10 Chuck Gruber will be testifying about, in addition to the  
11 complaint. So we just wanted to let the Court know that  
12 the parties have stipulated to the authenticity and  
13 admissibility of that document.

14 The City informed us that they may have one or  
15 two documents, but they are still looking into that. AMA  
16 told us that they don't anticipate having documents, but  
17 will get back to us as well. And the PPA doesn't  
18 anticipate having any documents.

19 Then in regards to other evidentiary matters, we  
20 briefly discussed with you, I believe in our last status  
21 conference, the possibility of raising continuing  
22 objection. We don't want to interrupt people. I know the  
23 order provides that the parties may object, may raise  
24 evidentiary objections, but we would like to ask the Court  
25 to basically enter an order of continuing objections from

1 the United States in regards to relevance.

2           The Court's order talks about how the testimony  
3 must be relevant. The cumulative nature of testimony,  
4 while we understand many people are going to be  
5 testifying, and we want as many people there possible  
6 testifying. We are more referring to that objection as to  
7 individuals themselves providing evidence that this is  
8 cumulative.

9           Hearsay, we do anticipate obviously a lot of  
10 that, but we don't want to raise objections throughout the  
11 hearing on that. We would like to address that as a  
12 continuing objection.

13           Any testimony that's argumentative, we would  
14 like to raise a continuing objection.

15           Even though none of us -- we have conferred with  
16 counsel. None of us anticipate settlement privileged  
17 discussions to come out under Rule 408, but as a  
18 precautionary measure, we would like that noted by the  
19 Court as well as a continuing objection.

20           And personal knowledge, we want to make sure  
21 that, of course, people are testifying to their personal  
22 knowledge.

23           THE COURT: All right. Although the personal  
24 knowledge is modified by the lay opinion rule. A lot of  
25 matters that might not be within personal knowledge might

1 be within the subject of lay opinion.

2 But in terms of your general proposition, I'm  
3 fine with that.

4 Does anybody have any objection or disagreement  
5 with that approach?

6 I will be glad to enter an order of continuing  
7 objections by all four parties. So all four parties will  
8 have continuing evidentiary objections under the Federal  
9 Rules of Evidence, I would say including, but not limited  
10 to relevance, cumulative testimony, 403, hearsay,  
11 argumentative comments, settlement and all attorney-client  
12 privilege, and lack of personal knowledge or other  
13 foundation. Then to the extent that you want to spell out  
14 what testimony should be either stricken or disregarded in  
15 response to a continuing objection, you can do that in  
16 your written briefing that will be filed on March 11th.

17 Does anybody have any objections to that  
18 approach? Hearing none.

19 MS. BROWN: Not by the United States.

20 MS. OSOINACH: No objection for the City.

21 THE COURT: Ms. Albies or Ms. Curphey?  
22 Mr. Karia?

23 MS. ALBIES: For the AMA Coalition, no  
24 objection.

25 THE COURT: Mr. Karia?

1 MR. KARIA: No objection, Your Honor.

2 THE COURT: I will enter that order of  
3 continuing objections for all four parties.

4 MS. BROWN: Thank you, Your Honor. Then the  
5 final matter on the United States' list was that  
6 Mr. Gruber will be testifying, of course, without an  
7 expert. He hasn't been discovered, given that this matter  
8 was resolved to any formal discovery process. The parties  
9 conferred on that, and they agreed to that stipulation  
10 that he may testify without discovery of an expert report.

11 THE COURT: Very good. All right.

12 MS. BROWN: I believe that's all for the  
13 United States.

14 THE COURT: All right. Anything else from the  
15 City?

16 MS. OSOINACH: Nothing further from the City.

17 THE COURT: Anything from the police  
18 association?

19 MR. KARIA: No, Your Honor.

20 THE COURT: Anything further from Albina  
21 Ministries Coalition?

22 MS. ALBIES: Yes, Your Honor. This is  
23 Ms. Albies.

24 I have a question. This is in terms if the  
25 Court has any sort of -- and this is more curiosity. I

1 understand it is the Court's discretion about when to  
2 enter testimony into the record.

3 Do you have any thoughts about how you plan to  
4 do that?

5 THE COURT: I'm not clear on exactly what you  
6 are asking.

7 MS. ALBIES: I believe the order that was  
8 entered said the Court will receive testimony, and it  
9 would be entered at the Court's discretion into the  
10 record. So people who have submitted written testimony,  
11 will the Court kind of be reviewing that and decide  
12 whether that will be entered into the record? And if so,  
13 whether they show up to testify or not, do you have any  
14 thoughts on how the Court will be entering that into the  
15 record, whether it will be published on ECF or be made  
16 public in any other way?

17 THE COURT: Good question. My thinking is, I  
18 would rather defer that to the parties. Here is my  
19 thinking: I will hear and read what I need to hear and  
20 what I need to read in order to make my decision on the  
21 fairness hearing. The only purpose of having a record, I  
22 think, is for appellate purposes; at least that's the  
23 primary purpose.

24 So I will be glad to receive into the record  
25 anything that any of the four parties believes should be

1 put into the record for appellate purposes, but I was not  
2 really planning in going through the written testimony  
3 that I have received already in deciding what should be  
4 part of the written record or the Court record and what  
5 shouldn't be.

6 My expectation is to issue a brief opinion and  
7 order on this. I'll strike the word "brief." My plan is  
8 to write an appropriate opinion and order on this. I will  
9 refer to whatever factual record I think is relevant to  
10 understand the reasoning that the Court has gone through  
11 in that opinion and order.

12 I don't think it is necessary for me to put  
13 certain things into the record for that purpose. If  
14 anyone disagrees, please tell me your opinion. Otherwise,  
15 my plan would be to simply invite the parties, whether it  
16 be before the hearing, after the hearing, or in the  
17 context of their March 11th filing, to ensure that the  
18 record has whatever the parties believe the record should  
19 have.

20 Anyone have a better approach or different  
21 approach?

22 COUNSEL: Yes, Your Honor.

23 THE COURT: All right. We heard a few people  
24 say "yes." The record is not reflecting anything to the  
25 contrary.

1 By the way, I want to let you know one more  
2 thing. We had a request, and I don't remember which  
3 organization did this. Mary, perhaps you do.

4 There may be one or two people that might not  
5 have government-issued photo ID. We received sort of an  
6 inquiry and a proposal of what to do about that.

7 Mary, who did that request come from?

8 THE CLERK: I think it was the American Mental  
9 Health Association. It was a local mental health  
10 organization. I can find the exact name.

11 THE COURT: I think we sent you copies of our  
12 response. We copied the parties?

13 THE CLERK: Yes.

14 MS. BROWN: Yes, Your Honor.

15 THE COURT: The Marshals Service here would  
16 really prefer us to not have very many people that try to  
17 enter this building without government-issued photo ID,  
18 but if there are going to be a couple, we are taking steps  
19 to try to make sure they can get in. We have accepted the  
20 proposal from this one organization that they will take  
21 photographs of people that they know want to come in and  
22 who do not have a government-issued photo ID, send us  
23 their names, their photographs, and we will have them on  
24 the list for the courtroom security officers down on the  
25 first floor of the courthouse. We need those photographs



1 and that list of names by the close of business on  
2 Wednesday, the week before our hearing. I think that's  
3 two days from now.

4 I don't want to advertise this too much. I  
5 don't want too many people that come without  
6 government-issued photo IDs. But if any of you know of  
7 people who are planning on coming and don't have or refuse  
8 to get government-issued photo IDs, this is how we are  
9 planning on dealing with it. I would really like to keep  
10 that number at a minimum. That's at the request of the  
11 U.S. Marshals Service.

12 MS. BROWN: Thank you, Your Honor.

13 We have one other question. This may be more  
14 directed to Mary, if Your Honor concurs in that request.  
15 We really appreciate the Court getting us the DVDs as  
16 quickly as possible and gathering that information. One  
17 of the issues that we realize when we got the CD of the  
18 written testimony was that there are some people that  
19 noted that they submitted a DVD, video testimony, and I  
20 just wanted to ask the Court how the Court plans on  
21 handling that as far as whether both showing the DVDs  
22 during the fairness hearing and also allowing counsel  
23 access to those before this hearing or after this hearing.

24 THE COURT: Let me ask Mary or Nicholle, I have  
25 not seen any DVDs.

1 THE CLERK: People have asked can they, and we  
2 have told them they can. I told them when they needed to  
3 have that to us by, but we haven't gotten anything.

4 THE COURT: Who is talking?

5 MS. BROWN: This is Adrian Brown.

6 THE COURT: Did you say that some people  
7 actually have submitted DVDs?

8 MS. BROWN: We're looking at that.

9 MR. WILLIAMS: Lisa Haynes said she would like  
10 her son to submit a DVD.

11 THE CLERK: He has not submitted one yet. I  
12 have been in contact with her and told her that he could.  
13 I haven't received anything yet. She said she would let  
14 me know.

15 MR. WILLIAMS: It is possible that people could  
16 walk in the door with DVDs.

17 THE COURT: My plan would be to ask how long the  
18 DVD is. If it is a reasonable length, plan on showing it  
19 right then and there. By "reasonable length," my  
20 presumption is any oral testimony and DVD should really be  
21 limited to five minutes per individual witness.

22 MS. BROWN: Yes, Your Honor.

23 THE COURT: If an individual comes in and says,  
24 "I would like to give you five minutes of my testimony and  
25 five minutes from my son," my plan is to say "fine." If

1 they want to say, "I would like to give you an hour DVD  
2 from my son," I don't think I am going to play it right  
3 then and there.

4 MS. BROWN: Right.

5 MS. CURPHEY: I think the AMA Coalition, at  
6 their community meetings, has taken videotaped testimony  
7 for people. I thought that DVD has been submitted, but  
8 obviously it hasn't. So I know at least some testimony  
9 that has been videotaped for people by the AMA Coalition.  
10 I don't know its length.

11 THE COURT: As far as we know, we have not  
12 received any DVDs. If you could check back with those  
13 folks, my guess is you will probably learn they were  
14 planning to bring it to the Court. If you could just  
15 inquire.

16 Could we get a list of the names of witnesses  
17 who are testifying on the video and approximately how long  
18 each testimony is. But if they think they have already  
19 turned it in to us, we don't have it.

20 MS. CURPHEY: I will clarify that. Thank you,  
21 Your Honor.

22 THE COURT: Let me ask all of you, because you  
23 have done a lot of these public hearings in this context  
24 before this, does anyone anticipate any particular  
25 disruptions that I should anticipate? I'm not asking for

1 names of potential people who might be disruptive. But  
2 what sort of disruptions might I anticipate, if any?

3 MS. BROWN: Your Honor, this is Adrian Brown for  
4 the United States. The United States has done a variety  
5 of both private council and phone conferences. The only  
6 interruptions that we have seen -- there have been some  
7 crowd noise here and there, which is nothing to be too  
8 shocked about. There have been some individuals who  
9 appear to have mental illness that may interrupt more  
10 loudly and more individually. But other than that, there  
11 hasn't been anything that caused, at least in our  
12 settings, a security concern. It has been more verbal  
13 outbursts.

14 THE COURT: My plan on dealing with that is to  
15 ensure that anyone who makes a verbal outburst is advised  
16 that they certainly can provide oral testimony, and I want  
17 to hear what they have to say. But I want to hear what  
18 everyone has to say, and so I would ask them to not have  
19 any more outbursts while other people are talking so we  
20 can hear what those folks have to say. Similarly, I will  
21 assure them, when they are talking, I will make sure that  
22 no one interrupts them.

23 We will play that by ear. That's helpful.  
24 Thank you.

25 All right. Anything else anyone wants to talk

1 about now?

2 MS. OSOINACH: Your Honor, the only other  
3 disruption that is fairly typical is clapping or showing  
4 support for whoever is testifying. I don't know how you  
5 want to deal with that, but that's fairly typical that the  
6 audience will clap.

7 THE COURT: I think if it is done in the middle  
8 of some testimony, I will urge the audience to refrain and  
9 wait until that person is done speaking so as not to take  
10 away from that person's time, because they are limited to  
11 five minutes. But if someone wants to have brief clapping  
12 after someone is done speaking, I'm not going to stop  
13 that.

14 MS. ALBIES: We have nothing further for this  
15 hearing, Your Honor.

16 THE COURT: I found this all very helpful.  
17 Thank you very much. If anyone needs to speak with us  
18 before the 18th, just let Mary know, and we will get on  
19 the phone with you.

20 COUNSEL: Thank you, Your Honor.

21 THE COURT: Thank you.

22 (End of proceedings.)  
23  
24  
25

--oOo--

I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/ Dennis W. Apodaca  
DENNIS W. APODACA, RDR, RMR, FCRR, CRR  
Official Court Reporter

December 30, 2014  
DATE